

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 202003118	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/03/2020 10:00 AM, Wednesday, 05/06/2020 8:45 AM	Location of Incident: Lexington Avenue and East 125th Street subway station	Precinct: 25	18 Mo. SOL 11/3/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 05/07/2020 11:31 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 05/07/2020 11:31 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Eroll Cherenfant	10720	955812	TB DT04
2. POF Krystelle Smiley	25115	968817	TB DT04

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Marjel Kola	12315	965243	TB DT04
2. POM Carmelo Colon	07470	967457	TB DT04
3. POM Thierno Sow	19960	968147	TB DT04

Officer(s)	Allegation	Investigator Recommendation
A.POF Krystelle Smiley	Abuse: On May 3, 2020, Police Officer Krystelle Smiley threatened § 87(2)(b) with the use of force.	
B.POM Eroll Cherenfant	Abuse: On May 3, 2020, Police Officer Eroll Cherenfant threatened to arrest § 87(2)(b)	
C.POM Eroll Cherenfant	Abuse: On May 3, 2020, Police Officer Eroll Cherenfant threatened to remove § 87(2)(b) to the hospital.	
D.POM Eroll Cherenfant	Abuse: On May 6, 2020, Police Officer Eroll Cherenfant refused to provide his name to § 87(2)(b)	
E.POM Eroll Cherenfant	Abuse: On May 6, 2020, Police Officer Eroll Cherenfant refused to provide his shield number to § 87(2)(b)	
F.POM Eroll Cherenfant	Abuse: On May 6, 2020, Police Officer Eroll Cherenfant threatened to arrest § 87(2)(b)	
G.POM Eroll Cherenfant	Abuse: On May 6, 2020, Police Officer Eroll Cherenfant threatened to remove § 87(2)(b) to the hospital.	

Case Summary

On May 7, 2020, § 87(2)(b) filed the following complaint with the Civilian Complaint Review Board (CCRB) by phone.

On May 3, 2020, at approximately 10:00 a.m., § 87(2)(b) entered the Lexington Avenue and East 125th Street subway station in Manhattan, without wearing a mask. While inside the station, § 87(2)(b) encountered PO Eroll Cherenfant from Transit Bureau District 4, who told § 87(2)(b) to put on a mask. After a back and forth about this, PO Cherenfant ejected § 87(2)(b) from the train station. While § 87(2)(b) was being ejected, PO Krystelle Smiley, also from Transit Bureau District 4, allegedly threatened to tase him if he did not comply with the officers (**Allegation A: Abuse of Authority;** § 87(2)(g)). Once outside, PO Cherenfant told § 87(2)(b) that if he reentered the station, he would be arrested for trespassing (**Allegation B: Abuse of Authority;** § 87(2)(g)). PO Cherenfant ordered § 87(2)(b) to leave the scene, which he contested; this led to a back and forth between the two, during which PO Cherenfant threatened to have § 87(2)(b) removed to the hospital (**Allegation C: Abuse of Authority;** § 87(2)(g)). § 87(2)(b) eventually walked away, and the officers returned to the station.

On May 6, 2020, § 87(2)(b) entered the same station at approximately 8:30 a.m., with the intention of obtaining PO Cherenfant's information. § 87(2)(b) was not wearing a mask and, after not complying with PO Cherenfant's repeated orders for him to put one on, was ejected from the station. Prior to this, he allegedly asked PO Cherenfant for his name and shield number three to four times, which PO Cherenfant refused to provide (**Allegation D and E: Abuse of Authority;** § 87(2)(g)). After § 87(2)(b) was ejected, PO Cherenfant again told § 87(2)(b) that if he attempted to enter that station, he would be arrested for criminal trespass (**Allegation F: Abuse of Authority;** § 87(2)(g)). He then told § 87(2)(b) to leave the scene; § 87(2)(b) refused and called 911 to speak with the Internal Affairs Bureau. While he was on the phone, PO Cherenfant again threatened to send § 87(2)(b) to the hospital as an emotionally disturbed person (EDP) (**Allegation G: Abuse of Authority;** § 87(2)(g)). § 87(2)(b) eventually left the scene and the officers returned to the station.

§ 87(2)(b) provided cellphone footage he took from the May 6 incident [BR01]. Body-worn camera (BWC) footage was received from PO Cherenfant, PO Smiley, and PO Marjel Kola for the May 3 incident and PO Cherenfant, PO Carmelo Colon, and PO Thierno Sow for the May 6 incident [BR02, BR03, BR04, respectively, and BR05, BR06, BR07, BR08, and BR09 respectively].

Findings and Recommendations

Allegation (A) Abuse of Authority: On May 3, 2020, Police Officer Krystelle Smiley threatened § 87(2)(b) with the use of force.

Allegation (B) Abuse of Authority: On May 3, 2020, Police Officer Eroll Cherenfant threatened to arrest § 87(2)(b)

As per the BWC footage PO Smiley did not threaten to tase § 87(2)(b). It is undisputed that PO Cherenfant threatened to arrest § 87(2)(b).

§ 87(2)(b) testified that upon entering the subway station he was approached by PO Cherenfant, PO Smiley, and PO Kola. PO Cherenfant informed § 87(2)(b) that he had to wear a mask inside the station, to which § 87(2)(b) replied that he would put one on if it was the law and began searching through his bag. He and PO Cherenfant then had a back and forth conversation, which lasted about ten seconds, at the end of which PO Cherenfant informed him that he was going to eject him for refusing to wear a mask. § 87(2)(b) contested this, stating that he was looking for one. PO Cherenfant and PO Kola then grabbed § 87(2)(b) and escorted him up the stairs and out of the station. § 87(2)(b) stated that as he was being escorted out, PO Smiley told him that if he did not stop resisting the officers, she would tase him. Upon exiting the station, PO Cherenfant told § 87(2)(b)

§ 87(2)(b) that he had to leave the premises or else he would be arrested for trespassing [BR10].

PO Cherenfant testified that he approached § 87(2)(b) after observing him not wearing a mask and blocking the turnstiles. He approached § 87(2)(b) and informed him he had to wear a mask, to which § 87(2)(b) replied he did not have to but did not provide a reason as to why. After going back and forth for two or three minutes, PO Cherenfant informed § 87(2)(b) he would be ejected from the station if he did not wear a mask. § 87(2)(b) did not comply with this command. PO Cherenfant then grabbed § 87(2)(b) arm and escorted him out of the station with PO Kola. Upon exiting the station, PO Cherenfant informed § 87(2)(b) that if he entered the train station again, he would be arrested for trespassing, as he had been given a lawful order to leave [BR11].

BWC footage from PO Smiley shows that she did not threaten to tase § 87(2)(b) at any point [BR03]. PO Cherenfant's BWC shows him ejecting § 87(2)(b) at the one-minute mark; no audio can be heard for the first minute, but it does not appear that § 87(2)(b) is attempting to procure a mask. At the 4:20 minute mark, he informs § 87(2)(b) that he is being formally ejected from the train station for not wearing a mask and that he would be arrested for trespassing if he entered the train station [BR02].

As per Patrol Guide Procedure 212-20, any person who violates any portion of NYCRR Part 1050 is subject to ejection from New York City Transit facilities [BR12]. NYCRR Part 1050 authorizes New York City Transit Authority with the power to make rules governing the conduct and safety of the public in the use and operation of the transit facilities [BR13].

On April 15, 2020 Governor Andrew Cuomo issued Executive Order 202.17, effective April 17, 2020 through May 15, 2020, requiring that all individuals above the age of two wear a face covering in public spaces [BR14].

§ 87(2)(g)

As per the above cited rules, § 87(2)(b) was required to wear a mask inside the train station. BWC does not show § 87(2)(b) complying, or attempting to comply, with this order. § 87(2)(g) As PO Cherenfant had formally ejected § 87(2)(b) and informed him of such, § 87(2)(g)

Allegation (C) Abuse of Authority: On May 3, 2020, Police Officer Eroll Cherenfant threatened to remove § 87(2)(b) to the hospital.

It is undisputed that PO Cherenfant threatened to remove § 87(2)(b) to the hospital during the incident.

§ 87(2)(b) testified that after being ejected from the station, PO Cherenfant ordered him to leave the scene. § 87(2)(b) contested this, responding that he was out of the station. PO Cherenfant then told him that if he did not leave the scene, he would have § 87(2)(b) removed to a psychiatric ward, as he was behaving irrationally. § 87(2)(b) asked him to clarify what he meant by irrational, but PO Cherenfant did not respond. Eventually, § 87(2)(b) called 911 to report the incident and, as he was speaking with the operator, PO Cherenfant, PO Kola, and PO Smiley reentered the station [BR10].

PO Cherenfant confirmed that he told § 87(2)(b) he would call an ambulance to take him to the hospital, as he believed he was emotionally disturbed. He believed § 87(2)(b) was an emotionally disturbed person because of his extreme reaction to the mask order, his lack of comprehension regarding the officers' orders, and certain things he said to the officers in their back and forth, although PO Cherenfant could not recall what these were. PO Cherenfant stated that he was concerned § 87(2)(b) was a harm to others and that if he went back into the station, he would start a physical altercation with someone, as that is a common occurrence. He decided not to call an ambulance, as § 87(2)(b) was already out of the station and had begun to walk away [BR11].

PO Cherenfant's BWC shows PO Cherenfant repeatedly threatening to remove § 87(2)(b)

to the hospital. At 2:43 minutes, PO Cherenfant tells § 87(2)(b) he is going to be removed to the hospital as an EDP. He repeats this at 3:18 minutes, telling § 87(2)(b) he “does not have time to play games...there’s obviously something wrong with you”. At 4:59 minutes, PO Cherenfant tells § 87(2)(b) “I’m about to handcuff you and send you to the hospital...you’re acting very disorderly right now”. He repeats again at 6:45 minutes that he will send § 87(2)(b) to the hospital if he does not leave the area [BR02].

As per Patrol Guide Procedure 221-13, when a uniformed member of service reasonably believes that a person who is apparently emotionally disturbed (EDP), the individual must be taken into protective custody because the person is conducting himself in a manner likely to result in serious injury to himself or others. The Patrol Guide defines an EDP as a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others [BR15].

§ 87(2)(g) While § 87(2)(b) was not compliant and disorderly with the officers, such actions are not necessarily indicative of an individual being emotionally disturbed. Additionally, PO Cherenfant could not reasonably explain why § 87(2)(b) actions led him to believe that he was a harm to himself or others. Furthermore, PO Cherenfant allows, as well as encourages, § 87(2)(b) to leave the scene; per the above cited procedure, PO Cherenfant was required to take § 87(2)(b) into custody and obtain medical assistance. By allowing § 87(2)(b) to walk away, PO Cherenfant’s actions indicated that he did not fully believe § 87(2)(b) presented a legitimate threat of harm to himself or others. § 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: On May 6, 2020, Police Officer Eroll Cherenfant refused to provide his name to § 87(2)(b)

Allegation (E) Abuse of Authority: On May 6, 2020, Police Officer Eroll Cherenfant refused to provide his shield number to § 87(2)(b)

As per BWC footage, PO Cherenfant did not refuse to provide § 87(2)(b) with his name and shield number.

§ 87(2)(b) testified that he asked PO Cherenfant for his name and shield number three to four times, which PO Cherenfant refused to provide each time. At one point, PO Cherenfant pointed to his shield, but did not verbally provide his name and shield number [BR10].

PO Cherenfant could not recall if § 87(2)(b) asked for his name or shield number during this incident [BR11].

BWC from PO Cherenfant shows § 87(2)(b) approach PO Cherenfant at 00:56 minutes. He asks PO Cherenfant which command he is from, but not for his name or shield number. At the 2:00 minute mark, PO Cherenfant provides his command and shield number to § 87(2)(b) § 87(2)(b) is at no point heard asking PO Cherenfant for his name or shield number [BR05].

§ 87(2)(g)

Allegation (F) Abuse of Authority: On May 6, 2020, Police Officer Eroll Cherenfant threatened to arrest § 87(2)(b)

Allegation (G) Abuse of Authority: On May 6, 2020, Police Officer Eroll Cherenfant threatened to remove § 87(2)(b) to the hospital.

It is undisputed that PO Cherenfant told § 87(2)(b) that he could be arrested for trespassing. It is also undisputed that he threatened to remove § 87(2)(b) to the hospital.

PO Cherenfant’s BWC from the incident shows § 87(2)(b) approaching the officers at 00:56

minutes. He and PO Cherenfant have a back forth until 1:33 minutes, where PO Cherenfant repeatedly asks § 87(2)(b) to put on his mask. He, PO Kola, and PO Colon then eject § 87(2)(b) from the station. At 1:47 minutes, PO Cherenfant informs § 87(2)(b) that if he reenters the station, he will be arrested for criminal trespass. He repeats this at 3:48 minutes, informing § 87(2)(b) that he was ejected because he refused to wear a mask. At 5:45 minutes, PO Cherenfant says, “Ok, we’re just going to EDP him and send him to the hospital” in response to § 87(2)(b) request to see a supervisor. At 5:59 minutes, PO Cherenfant tells § 87(2)(b) to leave to scene, which he does [BR05].

§ 87(2)(b) testified that after asking PO Cherenfant for his name and shield number, PO Cherenfant asked § 87(2)(b) to leave the station, as he was not wearing a mask. They then had a back and forth about this for four or five times; at one point, PO Cherenfant informed § 87(2)(b) that he would call an ambulance for him and that he was trespassing, although he did not elaborate as to why. PO Cherenfant then ejected § 87(2)(b) with PO Kola and PO Colon. Once outside, PO Cherenfant told § 87(2)(b) that he needed to leave, or he would call for paramedics and remove him to the psychiatric ward. § 87(2)(b) called 911 in response and was transferred to Internal Affairs Bureau (IAB), which he informed PO Cherenfant of. PO Cherenfant repeated that they were going to remove him to the hospital. He repeated to the officers that he was on the phone with IAB, who then went back inside the station [BR10].

PO Cherenfant did not initially remember his May 6 encounter with § 87(2)(b). After reviewing his BWC from the incident, PO Cherenfant recalled § 87(2)(b) entering the station without a mask, at which point he, PO Colon, and PO Kola ejected him from the station after he refused to do so. He acknowledged that he informed § 87(2)(b) that he would be arrested for trespassing. After viewing the footage, PO Cherenfant acknowledged telling § 87(2)(b) that he could call an ambulance for him if he did not leave the scene. He stated that he believed § 87(2)(b) was a harm to himself, as he was not comprehending the orders that the officers were giving him, which led him to believe that § 87(2)(b) required psychiatric evaluation and was “not right”. Once § 87(2)(b) began to walk away, PO Cherenfant determined that no further action was needed [BR11].

As per Patrol Guide Procedure 212-20, any person who violates any portion of NYCRR Part 1050 is subject to ejection from New York City Transit facilities [BR12]. NYCRR Part 1050 authorizes New York City Transit Authority with the power to make rules governing the conduct and safety of the public in the use and operation of the transit facilities [BR13]. On March 7, 2020, Governor Andrew Cuomo issued an Executive Order 202.17, requiring that all individuals above the age of two wear a face covering in public spaces [BR14].

As per Patrol Guide Procedure 221-13, when a uniformed member of service reasonably believes that a person who is apparently emotionally disturbed (EDP), the individual must be taken into protective custody because the person is conducting himself in a manner likely to result in serious injury to himself or others. The Patrol Guide defines an EDP as a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others [BR15].

As with the May 3 incident, § 87(2)(b) entered the station without wearing a mask and BWC footage shows PO Cherenfant repeatedly asking § 87(2)(b) to put one on, which he does not comply with. § 87(2)(g)

§ 87(2)(g)

While PO Cherenfant believed § 87(2)(b) to be an EDP, his reasoning did not provide an adequate basis to show why § 87(2)(b) could be considered a harm to himself or others. Additionally, as with the May 3 incident, PO Cherenfant allowed § 87(2)(b) to leave the scene, despite procedure dictating that an officer must secure medical attention for all EDPs. § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Cherenfant has been a member of service for six years and has been a subject in two CCRB complaints and two allegations, neither of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On December 22, 2020, a FOIL request was filed with the New York City Office of the Comptroller to determine a Notice of Claim was filed regarding this incident [BR17].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 8

Investigator: Genevieve Lamont Inv. Genevieve Lamont 12/28/2020
Signature Print Title & Name Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 12/29/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date